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**To:** Home Health Agencies **HHA 07**  
**From:** Jane Walters, Chief, Health Services Section  
**Via:** Cris Ros-Dukler, Director, Bureau of Quality Assurance

**Wisconsin Administrative Code Chapter HFS 133 Home Health Statewide Waivers**

**Wisconsin Administrative Code Chapter HFS 133 Home Health Interpretations**

The purpose of this memorandum is to provide information related to statewide waivers of specific Wis. Admin. Code Chapter HFS 133 requirements and changes to past interpretations. The Bureau of Quality Assurance (BQA) has been collaborating with the Wisconsin Homecare Organization to effect these actions.

**The Department of Health and Family Services is granting waivers of three state administrative rule provisions that are essentially the same as or substantially similar to federal requirements that apply to home health agencies that are not only state-licensed but also federally certified as Medicare/Medicaid providers. These waivers are applicable only to state-licensed home health agencies that are also Medicare/Medicaid certified.**

**The waivers do not apply to home health agencies that are not Medicare/Medicaid certified.**

**The waivers are intended to release the provider from compliance with state requirements that are also codified in federal regulations that the provider must satisfy. Non-compliance with the federal regulations on which the waivers are based may be considered state violations for purposes of licensure.**

**Statewide Waivers of Wisconsin Administrative Rules:**

1. Wis. Admin. Code § HFS 133.08(2)(intro.) currently reads:

Policies. A written statement of the rights of patients shall be made available to the patient or guardian, the spouse, parent, adult child or other relative, the sponsoring agency or representative payee and the public prior to the provision of any services and conclusion of a service agreement. Each patient receiving care from the agency shall have the following rights:

The first sentence of this provision is being waived. **The second sentence, "Each patient receiving care from the agency shall have the following rights:" is not waived.**

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*Rationale:* The federal regulation at 42 CFR 484.10(a)(1) requires written rights to be given prior to the provision of care. The intent of the federal and state requirements is similar, in that both require written notice of rights prior to treatment. Compliance with this requirement is evaluated by BQA surveyors during the standard survey process.

2. Wis. Admin. Code § HFS 133.08(2)(a) currently reads:

To be fully informed, as evidenced by the patient's written acknowledgment prior to or at the time of acceptance, of these rights and of all rules and regulations governing patient responsibilities.

**This provision is being waived.**

*Rationale:* The federal regulation at 42 CFR 484.10(a)(2) requires the agency to maintain documentation of distribution of rights to the patient. Interpretive guidelines for this federal regulation indicate that documentation maintained by a home health agency to show that the patient was informed of the patient's rights might include a patient rights statement, signed and dated by the patient or some other documentation. The intent of the federal and state requirements is similar in that both require documented evidence that a patient was given his or her rights. Compliance with this requirement is evaluated by BQA surveyors during the standard survey process.

3. Wis. Admin. Code § HFS 133.09(2) currently reads:

Service Agreement. No home health agency may provide services until the patient or guardian acknowledges in writing receipt of a written agreement identifying services to be provided and fees to be charged for them.

**This provision is being waived.**

*Rationale:* The federal regulation at 42 CFR 484.10(e) and [Bureau of Quality Assurance memo 91-011](#) clarifying the interpretation of 42 CFR 484.10(e) require that the agency provide either a list of all of its specific charges for all services and equipment it supplies or a list of all specific charges for the services and equipment it will be providing to a specific patient.

*Note:* The federal regulations at 42 CFR 484.10(c)(1)(i) and (ii) require that the agency advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished and advise the patient of any change in the plan of care before the change is made.

**Wis. Admin. Code Chapter HFS 133 Clarification and Interpretation**

1. Wis. Admin. Code § HFS 133.09(3)(a)2.

The home health agency shall provide the written notice required under subd. 1. to the patient or the patient's legal representative at least 10 working days in advance of discharge if the reason for discharge is any of the following:

- a. Payment has not been made for the patient's care, following reasonable opportunity to pay any unpaid billings.
- b. The home health agency is unable to provide the care required by the patient due to a change in the patient's condition that is not an emergency.

*Clarification:* This rule does not apply when a patient is discharged from the home health agency due to hospital admission near the end of the 60-day episode. In cases of such discharges, BQA surveyors will not cite the agency for not providing advance written notice of discharge.

2. Wis. Admin. Code § HFS 133.09(3)(a)3.c.

The patient no longer needs home health care as determined by the attending physician.

*Interpretation:* When a home health patient dies and the patient had a legal representative, the home health agency is no longer required to provide the legal representative with the written discharge notice.

If you have questions related to these statewide waivers or interpretations, please contact Marianne Missfeldt at (715) 836-4036 or [missfml@dhfs.state.wi.us](mailto:missfml@dhfs.state.wi.us)